

### **Remarks/Arguments**

This Response is provided in response to the non-final Office Action mailed January 30, 2008, in which the Examiner rejected claims 1-7 and 15-21 under 35 U.S.C. §102(b) as being anticipated by the prior art, and allowed claims 8-14. In view of the remarks and arguments presented below, the Applicant believes that claims 1-7 and 15-21 are presently in condition for allowance. However, the Applicant has decided to withdraw claims 1-7, and 15-21 from this application and present claims 1-7 and 15-21 in a continuation application.

The Applicant thanks the Examiner for the allowance of claims 8-14.

### **Rejection of Claims 1-7 and 15-21 Under 35 U.S.C. §102(b)**

In the Office Action mailed January 30, 2008, the Examiner rejected claims 1-7 and 15-21 under 35 U.S.C. §102(b) as being anticipated by United States Design Patent No. D246,282, issued to Dennis B. Jackson, (Jackson '282). The Applicant respectfully traverses this rejection.

### **Legal Precedent**

Anticipation means a lack of novelty, and is a question of fact which is reviewed by the reviewing court using a substantial evidence standard. *Brown v. 3M*, 60 USPQ2d 1375 (Fed. Cir. 2001); *Baxter Int'l, Inc. v. McGaw, Inc.*, 47 USPQ2d 1225 (Fed. Cir. 1998). To anticipate a claim, every limitation of the claim must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 58 USPQ2d 1286 (Fed. Cir. 2001). *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 122 S.Ct. 1831 (2002). Each such limitation must be found either expressly or inherently in the prior art reference. *Schering Corporation v. Geneva Pharmaceuticals, Inc.*, 02-1540, Decided August 1, 2003 (Fed. Cir. 2003). Accordingly, the Applicant needs only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter.

Jackson '282 fails to expressly or inherently identically show the limitations of: "an appendage support member projecting laterally from the main body portion, the appendage support member comprising *a top surface that provides a concave recess wherein a principle axis of the concave recess passing through a center of curvature and a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main*

body portion, and the appendage support member having a substantially continuous convex shaped surface over a majority of the bottom surface to provide an ergonomic support surface for an appendage of a user.”

***The cited reference fails to show an appendage support member comprising a top surface that provides a concave recess wherein a principle axis of the concave recess passing through a center of curvature and a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main body portion as recited by independent claims 1 and 15.***

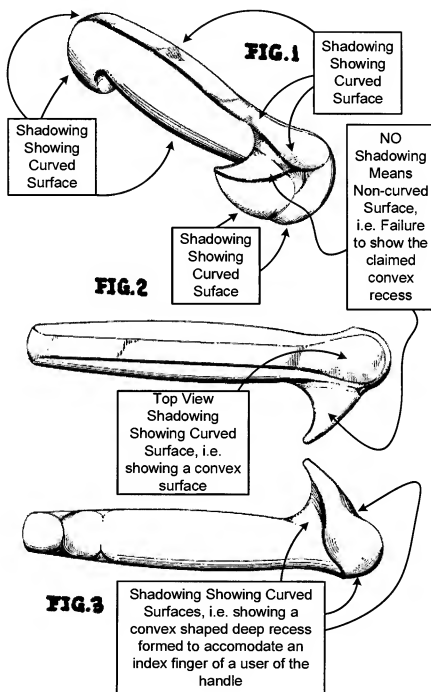
Independent claims 1 and 15 recite an “appendage support member comprising a top surface that provides a concave recess wherein a principle axis of the concave recess passing through a center of curvature and a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main body portion.” The concave recess wherein a principle axis of the concave recess passing through a center of curvature and a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main body portion, is illustrated at least in figures 4, 5, 6 and 8.

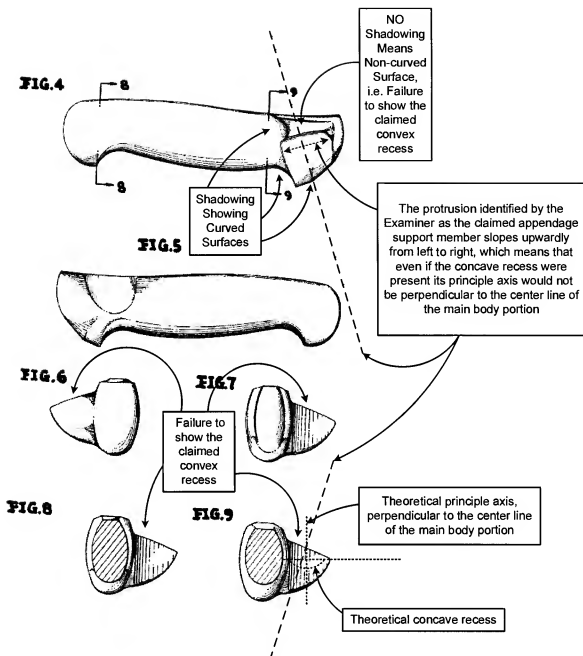
The Examiner has pointed specifically to Figure 1 of Jackson '282 as teaching “an appendage support member comprising a top surface that provides a concave recess wherein a principle axis of the concave recess passes through a center of curvature and inherently having a vertex of the concave recess.”

As shown below by the reproduced drawing figures of Jackson '282, neither a concave recess nor a principle axis of the concave recess passing through a center of curvature and a vertex of the concave recess is substantially perpendicular to and offset from a centerline of the main body portion is expressly or inherently identically show by Jackson '282. It is clear that the Applicant knew the use, need and how shadow lines identify inventive features of a Design Patent. A skilled artisan understands that the only disclosure of any substance is the drawings that accompany the statutory language of the claim for a Design Patent. Explicitly, the drawings taken in total provide what constitutes the invention, and therefore the drawings constitute what is shown by the prior art.

As can be seen below, Jackson '282 fails to provide shadowing identifying a concave surface on the appendage support member projecting laterally from the main body.

FIG. 4 shows the protrusion identified by the Examiner as the claimed appendage support member slopes upwardly from left to right, while FIGS. 6, 7, 8, and 9 show the appendage support member sloping downwardly from left to right away from the main body, which means that even if the concave recess were present, which it is not, its principle axis would not be perpendicular to the center line of the main body portion.





As clearly shown in FIG. 3, and well understood by a skilled artisan, the width of the appendage support member of Jackson '282 would not accommodate the claimed appendage support member, nor would the depth of the appendage support member as shown by FIG. 4 of Jackson '282 accommodate the claimed appendage support member. The reason the appendage support member of Jackson '282 could not accommodate the claimed appendage support member is seen by viewing a hypothetical, or theoretical concave recess of FIG. 9, shown above. The depth and width of the hypothetical or theoretical concave recess would cause a break-out of the front and back side walls of the

appendage support member of Jackson '282, breakouts that are not shown by FIGS. 6, 7, 8, and 9. In particular, the deep recess provides by Jackson '282 for a users index finger, as shown by FIG. 3, removed material that would be required to provide the claimed appendage support member. Therefore, Jackson '282 fails to anticipate claims every limitation recited in independent claims 1 and 15.

Furthermore, based at least upon their dependency to claims 1 and 15, dependent claims 2-7 and 16-21 are not anticipated by Jackson '282. For at least these reasons among others, the Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. § 102, and passage of claims 1-7 and 16-21 to allowance.

**Acknowledgement of Allowable Subject Matter:**

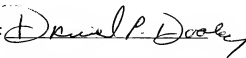
The Applicant agrees with the Examiner and gratefully acknowledges and thanks the Examiner for the diligence in the examination of and the allowance of claims 8-14.

**Conclusion**

The Applicant respectfully requests reconsideration and allowance of all of the claims pending in the application. This Response is intended to be a complete response to the non-final Office Action mailed January 30, 2008.

Should any questions arise concerning this response, the Examiner is invited to contact the below listed Attorney.

Respectfully submitted,

By: 

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